IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3636 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NK METALIA HIGH SCHOOL

Versus

STATE OF GUJARAT

Appearance:

MR ANAND L SHARMA with MR. G.M. JOSHI for the Petitioners

MR. A.D. OZA for respondent No. 3

MR. A. TRIVEDI for M/s. Patel Advocates for Respondent Nos. 1, 2

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 09/03/2000

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, the petitioners have assailed the order of the respondents refusing the permission for

recognition to run Standard 11 and 12 General Stream for girls, with grant, for the academic year 1999-2000.

2. Petitioner No. 1 is the school and petitioner Nos. 2 and 3 are students, whereas, respondent No. 1 is the State Government, respondent No. 2 the Commissioner for Higher Education and subsequently added respondent No. 3 is the Gujarat Secondary Education Board which is conducting examination for 10th and 12th Standard.

3. A few material facts, may be stated, at the outset, having material relevance and bearing on the merits and the challenge in this petition. The petitioner school applied registration for recognition for standard 11 pursuant to the advertisement given by the Higher Education Commissioner in Gujarat daily known as Gujarat Samachar on 13.2.1998. Application for registration of standard 11 was made on 30.3.1998. Since certain material particulars were lacking and being incomplete, correspondence was made which revealed that, later on, the prescribed proforma was completed and supplied the requisite material and information. Upon being processed, the application of the petitioners for permission to start standard 11 for the academic year June 1998 for girls came to be rejected by the Education Department by a letter dated 11.9.1998 because of the fact that there was no grant available during the year June 1998. The petitioner School, therefore, approached the appellate authority, State Education Department, by filing an appeal which came to be rejected, on 28.12.1998. It is not disputed that the application was made pursuant to the advertisement, on 13.2.1998, inviting applications for starting higher school standard. Advertisement issued by the Higher Education Director, specifically, contained that the applications will be subject to the policy decision of the Government from time to time with regard to the grant or otherwise at the relevant time and prevailing circumstances.

3. The District Education Officer, Amreli, had written a letter dated 1.11.1999 stating therein that standard 11 and 12 classes were being run by the petitioner school during the annual inspection carried on 29.9.1999. However, in reality, it was found that there were no regular classes of standard 11 and 12. Thus, there were no such classes run by the petitioner. That was reported by the District Education Officer to the Education Department.

4. The following facts, which are not in

controversy, may be highlighted so as to consider the merits of the petition.

i) that the application by the petitioner school for recognition was in pursuance of the public advertisement, dated 13.2.1998, only for staring standard 11 class and the said advertisement clearly stipulated that the application will be subject to the prevailing policy of the Government and the financial position and whether to approve with or without grant will be subject to the prevailing circumstances.

ii) that the petitioner school has admittedly not applied to the respondent No. 3 for assignment and allocation of index number for the ensuing examination commencing from 13.3.2000, within four days from fixed time.

iii) that the decision of the Government rejecting the application was communicated to the petitioner school. However, an option was given to the school as to whether the school would be ready to start the classes without grant and in that case the respondent had offered to accord permission to which the petitioner school was not ready. Even after exchange of correspondence, the petitioner school had never manifested the desire to run the classes without grant as Government declined to accept the request of grant for registration of the classes. Despite that action, the school continued unauthorisedly not only class 11 but commenced class 12 from June 1999.

It will be, also, interesting to note that the petitioner school had applied earlier in 1995-96 for registration and the request was turned down. An appeal was filed before the Government. It was also dismissed on 10.2.1997. Not only that again in subsequent year 1996-97 the petitioner school applied for registration and the repeated the same cause but without any success. In other words, the second application was also rejected. Unfortunately, these material aspects have not been articulated in the petition. It has material bearing. Nothing has been shown as to why the earlier two, unsuccessful, attempts were not mentioned in the petition. In fact his aspect itself may be sufficient to refuse to entertain this petition under Article 226 of the Constitution of India.

5. Be it as it may, the relief which is sought has no any legal sanction, the right which is claimed has no any statutory leg to stand. Under Section 31 in Chapter IV of the Gujarat Secondary Education Act, 1972, a clear prohibition against imparting of Secondary Education without registration is provided. No person, therefore, shall impart secondary education through school unless such school is registered under the provisions of this Act. Admittedly, the registration application for starting standard 11 class came to be rejected three times. The action on the part of the petitioner school through the management to run the class for higher secondary education without registration itself is not only unauthorised but illegal.

6. It is, in this context, a submission was advanced that looking to the sympathetic and pitiable position of 15 out of 50 girl students who were admitted in the school in class 12 without permission and authority, the petitioners' case requires some liberal and sympathetic approach. This submission itself is misplaced. The petitioner school, as such, unfortunately, is being responsible for frittering away the valuable academic life span of minor girls, knowingly they admitted students in standard 11, though permission was refused, repeatedly, thrice. What a travesty, it is, when it is urged that such students, now, should be dealt with, with sympathetic approach as contended by the learned counsel for the petitioners. It is nothing but an appeal to the heart rather than head which cannot be entertained when there is no justifying, supporting, statutory provision or legal sanction. A drowning man will also try to catch a straw, it is rightly said. In this context, the last submission may be narrated. It was therefore submitted that permission to appear in the ensuing examination which is commencing from 13.3.2000 i.e. within four days from today, should be granted directing the respondents to accept the application forms through the adjoining other school which is ready to oblige the petitioner school. This submission is also, absolutely, meritless and without any substance.

7. After having considered the facts and circumstances enumerated, hereinabove, and the relevant legal settings, there is no doubt in the mind of this court that this petition invoking extraordinary, plenary, equitable, discretionary, writ jurisdiction, is, totally, misconceived and deserves only and only one fate to be thrown over board, at admission stage.

8. On behalf of the respondent No. 3, learned advocate Mr. Oza had submitted that it is experienced in the State that many such classes with or without ulterior motive, go on starting and running classes unauthorisedly and at times making money while playing with the lives of the students, their career and so academic aspirations. It is in this context, obviously, the respondent authority should be ready to evolve an efficient strategy to monitor and control such irregular, illegal malpractice in the academic world affecting the future of young generation.

9. Mr. Oza has, also, rightly placed reliance on a decision of the Hon'ble Supreme Court in the case of C.B.S.E. VS. P. SUNIL KUMAR reported in (1998) 5 SCC 377, wherein, highlighting parameters of the judicial review and propriety of sympathetic consideration in such cases have been extensively, explored, expounded and highlighted. The practice of running unauthorisedly classes and claiming sympathy, at the fag end of the academic year when examinations are round the corner and such sympathy by the court in case of students of unaffiliated institution or unrecognised institution to appear at the examination is highly deprecated. The facts of the present case, squarely, attract the ratio propounded in the said decision.

10. Mr. Oza has also placed reliance on a decision of a Division Bench of this court in the case of MANSUKHBHAI KANJIBHAI PATEL VS. GUJARAT SECONDARY EDUCATION BOARD & ORS. reported in 2000(1) G.L.R. 1. This court in the said decision has, clearly, propounded that the payment of examination fees having not been made in time, along with forms, without any documentary evidence in support thereof, the action of Board rejecting the permission to appear was upheld, whereas, the case on hand stands on still higher footing for rejection where there was no recognition at all. In the case of M.K. Patel (supra) the recognition question was not there. Not only that the fees along with forms did not reach the office of the Board in time resulting into rejection of the request for appearance in the examination on being agitated before this court was upheld. This decision also lends material force to the defence and the contention raised on behalf of the respondents.

11. Learned A.G.P. Mr. Trivedi while supporting learned advocate Mr. Oza has taken this court through the entire relevant facts and correspondence transpired.

It was, rightly, submitted by him that there was no question of emergence of issue of promissory estoppel as Government policy pronounced in a resolution dated 1.9.1997 was in general and subject to financial stringency, status and crunch at the relevant time and also subject to change in the Government policy in the larger interest of the public. It is, in this context, he rightly, invited the attention of this court to the advertisement published in Gujarat Samachar on 13.2.1998 wherein it has been specifically articulated that applications were invited subject to the Government policy and the availability of the fund. It was, therefore, very, clear that mere issuance of general policy, resolution which is also circumscribed and pursuant to which an advertisement, which is conditional, is issued, obviously, would not give emergence of any right which can be recognised. It also would not, obviously, create any bar of promissory estoppel. Needless to mention at this juncture that a promise pursued by a person out of the policy of the authority, if it were altered in due course of time, on account of financial status and position of the authority or on account of larger public interest, the promise, if any, held out, will have to make a way for the larger public interest. The bar of promissory estoppel cannot be accorded on account of advertisement published in the daily Gujarat Samachar on 13.2.1998 that there was a policy and scheme on account of larger public interest. The paramountcy must be accorded to the larger public interest and not the interest of individual claiming promissory estoppel. This proposition of law is very well established and therefore it may not be necessary for this court, at this stage, to articulate, meticulously, in greater details.

In the light of the aforesaid circumstances and the relevant proposition of law, the petition deserves to be rejected at the threshold. Accordingly, it is rejected. A parting caution may be expedient in order to prevent such unpleasant, undesirable, avoidable, factual scenario in which the lives of minor students are at stake, it is, necessary, for the Government to evolve effective strategy to curb such activities and also to take strict and stringent actions against the errant schools and their management personnels.

With the above observations, the petition is rejected at the threshold. Notice is discharged with costs.

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